paid by the executor and plaintiff can claim no exemption. The principal case follows the decision of *United States* v. *Perkins*, 163 U. S. 625, 16 Sup. Ct. 1073, which, in translating a similar statute, decided that such a tax is not a levy upon property, but is strictly a tax upon the right to dispose of property by will. The reasoning of the decision is that the statute creates a lien upon the property at the moment of the testator's death, and the right of the legatee extends only to the property remaining after deducting the tax. *Matter of Penfold*, 216 N. Y. 163. That this is the more probable theory of "death duties" appears from the fact that it was the right to will rather than the right to receive by will that was granted by statute. In general, the statements of the courts imply that such taxes are upon the "right of succession" but the distinction of the present case has seldom been involved, so that the statements of the courts characterizing this right are nothing but *dicta*. *Corvin* v. *Baldwin*, 92 Conn. 99, 101 Atl. 834; *In re Cupple's Estate*, 199 S. W. 556; *Walker* v. *People*, —— Colo. ——, 171 Pac. 747. See also 33 L. R. A. (N. S.) 606. While the majority of the courts that really consider this point seem to support the principal case, *State* v. *Dunlap*, 28 Idaho 784, 156 Pac. 1141; *In re Terry's Estate*, 218 N. Y. 218, 112 N. E. 931; *In re Watson's Estate*, 174 N. Y. 191, a number of cases adopt an opposite theory. In cases involving legacy taxes in contradistinction to general inheritance taxes, the view is general that the legatee pays the tax rather than the executor, since any other view would require that all legacy taxes would have to be paid from the residual estate. *Matter of Gihon*, 169 N. Y. 443, 63 N. E. 561. *Corvin* v. *Baldwin*, 92 Conn. 99, 101 Atl. 834, implies a different view from that of the principal case in its intimation that jurisdiction of the court for the payment of general inheritance taxes may be secured by getting jurisdiction of the persons of the legatees. *Matter of Gihon*, 169 N. Y. 443, 63 N. E. 561, supports the view that the levy is upon the power to receive rather than upon the power to devise by will. The latest appearance of a doctrine contrary to the principal case is in *Henson* v. *Monday*, (Oct. 23, 1920), 224 S. W. 1042, in which the court takes the general stand that the nature of general inheritance taxes of this character is a levy upon the legatee's privilege to *receive* rather than a tax upon the power to *transmit*.

INSURANCE—ABSOLUTE PHYSICAL INABILITY NOT NECESSARY FOR "TOTAL DISABILITY."—It was stipulated in an accident insurance policy that for the loss of either foot by severance resulting from injury the defendant would pay a certain specified sum if the injury "shall independently and exclusively of other causes, immediately, wholly, and continuously disable and prevent the insured from performing any and every kind of duty pertaining to his occupation". The plaintiff sought a recovery for the loss of a foot the amputation of which was made necessary by an injury. He claimed compensation for a certain specified period on the ground of "total disability". The defendant resisted the claim on the ground that the plaintiff, during this certain period of alleged "total disability", was not "totally" disabled; that he had made two trips to New York where he "made an effort" to buy goods, assisted by his wife. His occupation was stated in the policy as "manager with office

and traveling duties". *Held,* that the plaintiff could recover. *Clark* v. *Travelers' Ins. Co.,* (Vt., 1920), 111 Atl. 449.

It appeared from the evidence in the case that although the plaintiff made the two trips to New York, he did so without due regard for his health, and experienced considerable bodily pain. That being the case, the decision of the court was not inconsistent with the proposition that an attempt to perform some of the duties of one's occupation, when such an attempt is an indiscretion or an error of judgment, will not defeat a claim of total disability. *United Casualty Co.* v. *Perryman,* 203 Ala. 212. It must also be borne in mind that the courts in these insurance cases show a tendency to be very liberal toward the insured and to construe the language of the policy against the insurer on the ground that he chooses the language of the contract. The instant case is in accord with other authorities on this question of what amounts to total disability, although in some of the cases the distinction between partial and total disability is very finely drawn. The distinction seems to turn largely on the clause in the policy defining the application of the indemnity to the injury and to the occupation, and defining the disability. In the following cases the clauses in the policies were the same as that in the case at bar and yet a recovery was denied; *Spicer* v. *Commercial Mutual Accident Ins. Co.,* 4 Pa. Dist. Rep. 271; *Gracey* v. *Peoples' Mut. Accident Ins. Asso.,* 21 Pitts. L. J. N. S. 25; *Ford* v. *U. S. Mut. Accident Relief Co.,* 148 Mass. 153; *Bean* v. *Travelers' Ins. Co.,* 94 Cal. 581; *Knapp* v. *Preferred Mutual Accident Association,* 53 Hun (N. Y.) 84; *Stevens* v. *Peoples' Mutual Accident Asso.,* 150 Pa. 132. In the following cases a recovery was allowed:. *Young* v. *Travelers' Ins. Co.,* 80 Me. 244; *Baldwin* v. *Fraternal Accident Ass'n,* 31 Misc. Rep. 124; *Lobdill* v. *Laboring Men's Mutual Aid Ass'n,* 69 Minn. 14; *Turner* v. *Fidelity and Casualty Co.,* 112 Mich. 425. It appears from an examination of the cases that the courts of last resort are not in complete accord, but the weight of authority seems to be that the insured is "totally disabled" within the meaning of the policy if he is unable, with prudence and a due regard for his physical welfare, to perform the substantial and material acts necessary to carry on his occupation. Even though the insured is able to perform a few occasional and incidental acts pertaining to his occupation, yet if he is unable to perform the substantial and material portion of his work he is considered as "totally disabled". See 4 COOLEY'S BRIEFS ON INSURANCE, 3290. As the court in the instant case very well points out, the provision of disability in such a policy cannot be given a literal construction. If it were given such a construction the company could always avoid liability unless the insured lost his life or reason as a result of the injury, for a man can always transact some parts of his business if he is possessed of his mental faculties. The term "total disability" then must be given a reasonable interpretation depending in a great measure upon the circumstances of each particular case. 4 COOLEY'S BRIEFS ON INSURANCE, 3288.

INTOXICATING LIQUORS—STATUTORY FORFEITURE OF AUTOMOBILE CARRYING LIQUOR—DUE PROCESS.—Claimant intrusted his automobile to his chauffeur to take to a garage in Washington, D. C. The chauffeur stole the machine